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IN RE CERTIFIED QUESTION FROM THE
UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MICHIGAN

CT COURT
MICHIGAN
ON

PAMELA MATTISON,
o.b.o. M.M. and M.M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Hon. Richard Alan Enslen

Case No. 4:05-CV-79

FILED

JAN 09 2012

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

REPORT AND RECOMMENDATION

This is an action pursuant to Section 205(g) of the Social Security Act, 42 U.S.C.

2/7 § 405(g), to review a final decision of the Commissioner of Social Security denying Plaintiff's claim
that her children are entitled to survivor's benefits under the Social Security Act.

Pursuant to 28 U.S.C. § 636(b)(1)(B), authorizing United States Magistrate Judges

to submit proposed findings of fact and recommendations for disposition of social security appeals,
the undersigned recommends that the parties' Stipulation and Order Certifying Question of Law to
the Michigan Supreme Court, (dkt. #12), be **granted and, furthermore, that this matter be
administratively closed pending resolution of such by the Michigan Supreme Court.**

As detailed in the parties' joint stipulation, Plaintiff asserts that her children are
entitled to receive survivor's benefits under the Social Security Act as a result of the unfortunate
death of their father. The Commissioner of Social Security denied Plaintiff's claims, but as both
parties recognize proper resolution of Plaintiff's claims turns on a question of Michigan intestacy

law which the Michigan Supreme Court has not resolved. Accordingly, the parties have stipulated and agreed to certify the relevant question to the Michigan Supreme Court for resolution.

The Court has reviewed the proposed stipulation and finds that the parties have correctly articulated the provisions of federal law governing Plaintiff's claim. Moreover, the Court agrees that the legal question to be certified to the Michigan Supreme Court "is determinative of this action." Finally, the Court finds that the proposed stipulation complies with Michigan Court Rule 7.305 addressing the certification of such matters to the Michigan Supreme Court.

CONCLUSION

For the reasons articulated herein, the undersigned recommends that the parties' Stipulation and Order Certifying Question of Law to the Michigan Supreme Court, (dkt. #12), be **granted**. The Court further recommends that this matter be **administratively closed pending resolution of the relevant question by the Michigan Supreme Court**.

OBJECTIONS to this report and recommendation must be filed with the Clerk of Court within ten (10) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Date: April 2, 2007

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge

Certified as a True Copy
By [Signature]
Deputy Clerk
U. S. District Court
Western Dist. of Michigan
Date 10-4-11

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

PAMELA MATTISON o/b/o M.M. and M.M.,

Plaintiff,

Case No.4:05-cv-79

v.

Hon. Richard Alan Enslen

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

_____ /

ORDER APPROVING REPORT AND RECOMMENDATION

The court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties. No objections have been filed pursuant to 28 U.S.C. § 636(b)(1)(C).

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge, filed April 2, 2007, is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that the parties' Stipulation Certifying Questions of Law to the Michigan Supreme Court (Dkt. No. 12) is **GRANTED**.

IT IS FURTHER ORDERED that this matter is administratively closed pending resolution of the relevant question by the Michigan Supreme Court.

Dated in Kalamazoo, MI:
April 20, 2007

/s/Richard Alan Enslen
Richard Alan Enslen
Senior United States District Judge

Certified as a True Copy
By JK/86mk
Deputy Clerk
U.S. District Court
Western Dist. of Michigan
Date 10-4-11

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAMELA MATTISON, on behalf of
M.M. and M.M.,

File No. 4:05 CV 0079

Plaintiff,

Hon. Richard Alan Enslen
Senior U. S. District Judge
Hon. Ellen S. Carmody
U.S. Magistrate Judge

vs.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

**STIPULATION AND ORDER CERTIFYING QUESTION OF LAW
TO THE MICHIGAN SUPREME COURT**

Pursuant to Michigan Court Rule 7.305, and subject to the approval of the Court, it is hereby stipulated and agreed as follows by and between the undersigned regarding certification of a question of Michigan law to the Michigan Supreme Court, which is not controlled by Michigan Supreme Court precedent and is determinative of this action:

FACTUAL STATEMENT

1. Pamela Mattison and Jeffery Mattison were married on November 4, 1995. (Transcript ("Tr.")¹ at 24). On February 20, 1998, their daughter, J.M., was born. (Tr. at 26).

2. Mr. Mattison banked his sperm following a diagnosis of lupus. (Tr. at 60-69, 198). On May 18, 1998, Mr. Mattison executed a "General Durable Power of Attorney" which stated the following:

¹ Cites to the "Transcript" refer to the Administrative Transcript of proceedings before the Social Security Administration, filed conventionally with the Court.

I, Jeffery Lynn Mattison, of Portage, Michigan, hereby appoint Pamela Sue Mattison, as my attorney-in-fact (herein called agent) with the following powers to be exercised in my name and for my benefit:

...

22.) FROZEN SAMPLES

To take any and all action necessary pertaining to any sperm or embryos I may have stored including their implantation or termination.

(Tr. at 90-96).

3. In addition to banking his sperm, Mr. Mattison was an active participant in an attempt to conceive via *in vitro* fertilization. (Tr. at 21).

4. Mr. Mattison died on January 18, 2001, while domiciled in Michigan. (Tr. at 70).

5. After Mr. Mattison's death, Mrs. Mattison conceived twins through artificial insemination using Mr. Mattison's banked sperm. On October 8, 2001, M.M. and M.M. were born. (Tr. at 71-72).

6. On or about October 23, 2001, Mrs. Mattison, on behalf of M.M. and M.M., filed an application for Social Security survivor's benefits (i.e., child's insurance benefits) based on the earnings record of Mr. Mattison. (Tr. at 29-30).

7. The Social Security Administration denied the application initially and upon reconsideration. (Tr. at 34-45).

8. On June 21, 2004, a hearing was held before an Administrative Law Judge. (Tr. at 192-217). On November 24, 2004, the Administrative Law Judge issued a decision that M.M. and M.M. are not entitled to child's insurance benefits under section 216(h) of the Social Security Act, 42 U.S.C. § 416(h), based on the earnings record of Mr. Mattison, because it was the opinion of the

Administrative Law Judge that M.M. and M.M. could not inherit from him as his children under Michigan intestacy law. (Tr. at 14-22).

9. On June 13, 2005, the Appeals Council of the Social Security Administration denied Mrs. Mattison's request for review of the Administrative Law Judge's decision. (Tr. at 3-5).

10. On August 4, 2005, plaintiff filed the instant action challenging the final decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g).

QUESTION TO BE ANSWERED

Pursuant to Michigan Court Rule 7.305, the following question of law, which is not controlled by Michigan Supreme Court precedent, shall be certified to the Michigan Supreme Court:

Whether M.M. and M.M., conceived after the death of Jeffery Mattison via artificial insemination using his sperm, can inherit from Jeffery Mattison as his children under Michigan intestacy law.

This question is determinative of this action because, under the Social Security Act (the "Act"), an individual who is the "child" of an insured wage earner and is dependent on the insured at the time of his death is entitled to child's insurance benefits. 42 U.S.C. § 402(d)(1). In determining "child" status, the Act instructs the Commissioner:

In determining whether an applicant is the child . . . of a fully or currently insured individual for purposes of this subchapter, the Commissioner of Social Security shall apply such law as would be applied in determining the devolution of intestate personal property . . . by the courts of the State in which [such insured individual] was domiciled at the time of his death . . . Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

42 U.S.C. § 416(h)(2)(A).² Thus, if M.M. and M.M. may inherit from Mr. Mattison under Michigan intestacy law, each is considered to be a “child” of Mr. Mattison under the Act and is therefore entitled to child’s insurance benefits.³

Dated: February 21, 2007

/s/ Victor L. Bland
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Counsel for Plaintiff

Respectfully submitted,

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RICHARD G. LEPLEY
Assistant Branch Director

/s/ Isaac R. Campbell
ISAAC R. CAMPBELL
Trial Attorney
United States Department of Justice

² If an applicant does not qualify as a “child” under Section 416(h)(2)(A), the Act provides three other mechanisms for establishing “child” status. See 42 U.S.C. §§ 416(h)(2)(B), 416(h)(3)(C)(i), 416(h)(3)(C)(ii). None of these mechanisms is applicable here, however.

³ Under the Act, a claimant must also show that he “was dependent upon” the deceased wage earner “at the time of [the wage earner’s] death” in order to be eligible for child’s insurance benefits. 42 U.S.C. § 402(d)(1)(C)(ii). Under 42 U.S.C. § 402(d)(3), a legitimate child is deemed dependent upon his father at the time of his father’s death unless the child has been adopted by someone else. Likewise, a child who satisfies the requirements of Sections 416(h)(2) or 416(h)(3) of the Act is considered legitimate and, therefore, deemed dependent. See 42 U.S.C. § 402(d)(3); Social Security Ruling 77-2c. Therefore, if M.M. and M.M. each qualify as a “child” of Mr. Mattison pursuant to Section 416(h) of the Act, i.e., if M.M. and M.M. can inherit from Mr. Mattison under Michigan intestacy law, then they are deemed dependent upon Mr. Mattison and are entitled to child’s insurance benefits.

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OF COUNSEL:

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Office of the General Counsel
Social Security Administration

IT IS SO ORDERED.

Entered: _____

RICHARD ALAN ENSLEN
Senior United States District Judge

2008 JUN 10 10:10 AM
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CLERK OF COURT
1000 WALL STREET
NEW YORK, NY 10038